

DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

Parent, on behalf of the Student,¹

Petitioner,

v.

The District of Columbia Public
Schools ("DCPS"),

Respondent.

Date Issued: April 24, 2011

Hearing Officer: Ramona M. Justice

Case No:

Hearing Room: Room 2003

OSSE
STUDENT HEARING OFFICE
2011 APR 25 AM 9:53

HEARING OFFICER DETERMINATION

I. JURISDICTION

The due process hearing was held; and the Hearing Officers' decision is written, pursuant to the Individuals with Disabilities Act ("IDEA"), P.L. 101-476, as amended by P.L. 105-17; reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA"), Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; Title 38 of the D.C. Code, Subtitle VII, Chapter 25; and Chapter 30, Title 5-E of the District of Columbia Municipal Regulations ("DCMR").

II. PROCEDURAL POSTURE

On February 28, 2011, the parent, through her Attorney, filed with the District of Columbia, Office of the State Superintendent of Education ("OSSE"), Student Hearing Office, an "Administrative Due Process Complaint Notice", on behalf of the student. On March 24, 2011 the Respondent filed "District of Columbia Public School's Response to Petitioner's Due Process Complaint".

On March 1, 2011, the Student Hearing Office assigned the due process complaint to this Hearing Officer. On March 14, 2011, the Hearing Officer issued to the parties a "Notice of Prehearing Conference", scheduling the prehearing conference for March 25, 2011 at 4:00 p.m.; and an Order requiring the parties to notify the Hearing Officer of the date, time, and outcome of the resolution meeting.

¹ Personal identification information is provided in Appendix A.

According to the IDEA, the Respondent must convene a resolution meeting within fifteen (15) calendar days from the date of the complaint, expiring in this matter on March 15, 2011. The thirty (30) day resolution period ended on March 30, 2011.

On March 15, 2011, the Respondent filed the "Resolution Period Disposition Form", notifying the Hearing Officer that the resolution meeting convened on March 15 2011, without resolution. Therefore, the 45 day timeline for convening a hearing and issuing a decision began on March 16, 2011, the day after the resolution meeting; and expires on April 29, 2011.

The prehearing conference was held on March 25, 2011 at 4:00 p.m., and on this date, the Hearing Officer issued a prehearing order summarizing matters discussed during the prehearing conference, issues to be decided by the Hearing Officer, and confirming the due process hearing for April 12, 2011, at 8:30 a.m...

The due process hearing convened on April 12, 2011, at 8:30 a.m., as scheduled, at 810 First Street, N.E., 2nd Floor, Washington, D.C... The hearing was closed to the public, pursuant to the parents' request. Each party was represented by counsel; and each Attorney provided opening statements.

During discussion of preliminary matters, the Respondent entered on the record a Motion to Dismiss Petitioner's due process complaint, due to parent's failure to appear for the hearing. The parent appeared for the hearing shortly after the motion was entered, thus the Hearing Officer denied Respondent's motion to dismiss.

During discussion of disclosures, the Petitioner offered into evidence Petitioner's Exhibits 1-8, and the Respondent offered into evidence Respondent's Exhibits 1-5. The Respondent objected to Petitioner's Exhibits 1, 2, 6, and 8, on the grounds of relevancy, jurisdiction, and authenticity. After hearing arguments from the parties the Hearing Officer sustained Respondent's objection, in part, excluding Petitioner's Exhibits 1, 2, and 8, specifically documents created after February 28, 2011, the date of the complaint; and denied the motion with regard to Petitioner's Exhibit 6, finding that the document's probative value fair outweighed any prejudice to the Respondent.

The Petitioner objected to Respondent's Exhibit 1, on the grounds of relevancy. After hearing argument from the parties, the Hearing Officer sustained Petitioner's objection, excluding from evidence Respondent's Exhibit 1. Admitted into the record as evidence was Petitioner's Exhibits 3, 4, 5, 6, and 7; and Respondent's Exhibits 2-5.

Petitioner's witnesses included: the student's mother, and Education Advocate. The Respondent's witnesses included: the Special Education Coordinator at

The due process hearing concluded with the Petitioner and Respondent providing closing statements; and requesting that the Hearing Officer find in each party's favor on all issues in the complaint.

III. BACKGROUND

The student is _____ years of age; and a _____ grade student at a District of Columbia elementary school. In October, 2010, the Petitioner through her Attorney, forwarded to the Principal at the student's school, a written request for the opportunity to inspect and review the student's educational records; and a written request for initial evaluations, to determine the student's eligibility for special education services.

On February 11, 2011, the Respondent issued to the parent a "Prior Written Notice-Evaluation", notifying the parent that based on a review of the student's academic and attendance records, the team determined that the student is progressing academically and behaviorally, therefore, the student was not suspected as a student with a disability, and initial evaluations would not be completed.

On February 28, 2011, the parent, through her Attorney, filed this due process complaint challenging the Respondent's decision not to evaluate the student to determine the student's eligibility for special education services; and failure to provide the parent access to the student's educational records.

IV. ISSUES

The following issues are before the Hearing Officer:

- (1) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to identify, locate, evaluate, and determine the student's eligibility for special education services, within 120 days of parent's October 8, 2010 request for initial evaluations, in violation of the "Child Find" provisions of the IDEA, at 34 C.F.R. §§300.111, 300.301 and 300.304(c) (4) and (6)?
- (2) Whether the District of Columbia Public Schools denied the student a free appropriate public education, by failing to convene a Multidisciplinary Development Team (MDT)/Student Evaluation Planning team meeting to discuss the educational needs of the child, parent's request for initial evaluations, and obtain parent's informed written consent to evaluate the student, in violation of the IDEA, at §300.300(1) (i) (ii) and (iii)?
- (3) ²Whether the Respondent denied the student a free appropriate public education, because it failed to provide the parent access to the student's educational records, within 45 days of parent's October 5, 2010 request for access to the students records, in violation of the IDEA, at 34 C.F.R. §300.613 (b)?

² During the prehearing conference and at the hearing, the Respondent objected to Petitioner providing information regarding efforts made to access the student's educational records, in support of Issue 3 of the complaint, because the information was not included in the complaint. The Hearing Officer determined that one purpose of the prehearing conference is to fully discuss facts surrounding the issues, the Respondent had an opportunity to inquire regarding the facts in the complaint, had not filed a Notice of Insufficiency challenging the sufficiency of the complaint pursuant to IDEA, 34 C.F.R. §300.508 (b)(2), and was not unduly prejudiced, therefore, the objection was overruled.

V. RELIEF REQUESTED

The Petitioner requests that the Hearing Officer find in its favor on each issue in the complaint. The Petitioner also requests that the Hearing Officer issue an Order requiring the Respondent to conduct initial evaluations, and any other evaluations recommended in the initial evaluations.

The Petitioner also requests that the Hearing Officer issue an Order requiring the Respondent to convene a Multidisciplinary Development Team (MDT)/Individualized Education Program (IEP) team meeting, with all relevant team members within thirty (30) days from the date of the hearing to review the evaluations, develop the student's IEP, if determined eligible, and no later than May 30, 2011, discuss and determine an appropriate placement for the student. The Petitioner withdrew its request for compensatory education services.

VI. CREDIBILITY DETERMINATIONS

The testimony of all witnesses at the hearing was credible. The Respondent presented no witness testimony that contradicted the testimony of Petitioner's witnesses; or countered evidence presented by the Petitioner, on the issues in the complaint.

VII. FINDINGS OF FACT

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

1. The student is _____ years of age, and a _____ grade student at a District of Columbia elementary school, which he has attended since the 2008/09 school year.³
2. During the 2008/09, 2009/10, and 2010/11 school years, the student's teachers expressed concern regarding the student's attendance and the impact upon the student's learning and educational performance.⁴
3. During the 2010/11 school year, the student began exhibiting disruptive behavior in the classroom, and was suspended.⁵ On November 16, 2010 the student was suspended for stabbing another student in the hand with a pencil; on December 13, 2010, for fighting another student in the classroom; and on February 23, 2011, for fighting another student in the classroom, in the hallway, and out of the school building.⁶
4. On **October 5, 2010**, the Petitioner, through her Attorney faxed to the Principal at the student's elementary school, a written request for the opportunity to inspect and review the student's educational records.⁷

³ Testimony of parent, and Respondent's Exhibit 5.

⁴ Respondent's Exhibit 5, pages 1-5.

⁵ Petitioner's Exhibit 1

⁶ Respondent's Exhibit 3, pages 1-4.

⁷ Petitioner's Exhibit 7.

5. On **October 8, 2010**, the Petitioner, through her Attorney, faxed to the Principal at the student's elementary school, a written request for a copy of the student's educational records.⁸ The letter also included a request for a Multidisciplinary Development Team (MDT)/Individualized Education Program (IEP) team meeting to discuss evaluation findings, and parent concerns regarding the student's social/emotional and academic problems at school; and evaluation of the student to determine the student's eligibility for special education services.⁹
6. On **October 18, 2010**, a special education teacher at the student's school forwarded a letter to the parent, acknowledging the parent's referral of the student for initial evaluation, to determine the student's eligibility for special education services; and included with the letter a copy of the Procedural Safeguards Notice.¹⁰

The letter informed the parent that the next step was for the school staff to review the student's educational and behavioral data, and determine whether to evaluate the student; and thereafter, it would prepare a Prior Written Notice indicating the next step in the evaluation process.¹¹

The letter also informed the parent that in some cases, the school may determine that there is not enough evidence to support conducting an initial evaluation and would therefore propose alternative options to special education.¹²

7. On **February 11, 2011**, the Respondent completed an "Analysis of Existing Data", documenting the data reviewed and considered by a team, in determining that the student is not suspected as a student with a disability, and evaluations are not warranted.¹³
8. On **February 11, 2011**, the Respondent issued to the parent a "Prior Written Notice-Evaluation", notifying the parent that based on a review of the student's academic and attendance records, the team determined that the student has made academic growth despite excessive absences.¹⁴

The notice also indicates that the student is academically competent and progressing academically and behaviorally, therefore, the student is not suspected as a student with a disability, and the Respondent would not evaluate the student to determine the student's eligibility for special education services.¹⁵

⁸ Petitioner's Exhibit 6.

⁹ Id.

¹⁰ Petitioner's Exhibit 5.

¹¹ Petitioner's Exhibit 5, pages 1-5.

¹² Id.

¹³ Id.

¹⁴ Respondent's Exhibit 4.

¹⁵ Id.

9. Failure to Identify, Locate, Evaluate, and Determine Student's Eligibility for Special Education Services

"Child Find".

According to the parent, in November, 2010, the student began exhibiting problematic behavior at school. The Petitioner presented no evidence that over an extended period of time prior to November, 2010, or after November, 2010, the Respondent knew or should have known that the student was suspected as a student with a disability and in need of special education services.

The Hearing Officer finds that the Petitioner presented no evidence that the District of Columbia Public Schools failed in its obligation under the IDEA, to identify, locate, evaluate, and determine the student's eligibility for special education services, under the Child Find provisions of the IDEA.

Initial Evaluations.

On October 8, 2010, the parent requested that the Respondent conduct initial evaluations, to determine the student's eligibility for special education services.¹⁶ On October 18, 2010, in response to Petitioner's request, the Respondent forwarded a letter to the parent, acknowledging receipt of parent's referral for initial evaluations, and informing the parent that the school staff would review the student's educational and behavioral data and determine whether to proceed with initial evaluations.

On February 11, 2011, the Respondent issued to the parent a "Prior Written Notice-Evaluation", notifying the parent that a team of individuals reviewed the student's academic and attendance records, and based on that review, determined that the student made academic growth despite excessive absences, was not suspected of having a disability, and initial evaluations would not be completed.¹⁷

According to the SEC, the student does not present as a student with an emotional disability although the student has difficulty "dealing" with his emotions when upset; and exhibits frustration, because the student does not exhibit these behaviors across all settings and the behavior does not adversely impact the student's learning.¹⁸

The SEC testified that if the student had a disability the student would respond differently to the interventions imposed; and that the student's attendance is a factor in the student's learning and educational performance.¹⁹

¹⁶ Petitioner's Exhibit 6.

¹⁷ Testimony of SEC.

¹⁸ Id.

¹⁹ Id.

The SEC also testified that on several occasions the parent informed the school that she did not want the student evaluated, and stated that the request for initial evaluations was initiated by her Attorney' and was not her decision, and that the request was for Petitioner's other child.²⁰

Assuming the parent made these representations to the school, the school had an obligation to verify the information received, and convene a meeting with the parent and Attorney to determine whether the request submitted by Petitioner's Attorney was for this student, and whether the parent consented to the evaluations, however, this failed to occur.²¹ As of February 28, 2011, the date of the complaint, the Respondent failed to obtain parents' informed consent and conduct initial evaluations, to determine the student's eligibility for special education services.

The Hearing Officer finds that the Petitioner presented evidence that the District of Columbia Public Schools failed in its obligation to conduct a full and individual initial evaluation of the student within a reasonable period of time of receiving parent's October 8, 2010 request for initial evaluations, or by February 8, 2011, within 120 days from the date the student was referred for evaluation by the parent.

10. Failure to Convene a Multidisciplinary Development Team (MDT)/Student Evaluation Planning (SEP) Team Meeting

On October 8, 2010, the parent requested evaluation of the student and a Multidisciplinary Development Team (MDT)/Individualized Education Program (IEP) team meeting to discuss evaluation findings, and parent concerns regarding the student's education.²²

On October 18, 2010, the Respondent forwarded a letter to the parent, acknowledging receipt of parent's referral for initial evaluations, and informed the parent that the school staff would review the student's educational and behavioral data and determine whether to proceed with initial evaluations.²³ The Respondent's letter failed to address the parent's request for a meeting.²⁴

On February 11, 2011, without convening a MDT/SEP team meeting with the parent, the Respondent issued to the parent a Prior Notice informing the parent that the team determined that the student was not suspected as a student with a disability and that initial evaluations would not be completed.²⁵ As of February 28, 2011, the date of the complaint, the Respondent had not convened a MDD/SEP team meeting with the parent.

The Hearing Officer finds that the District of Columbia Public Schools failed to convene a Multidisciplinary Development Team (MDT)/Student Evaluation Planning (SEP) team meeting with the parent, to discuss the student's educational needs, parent's request for initial evaluations, and obtain parent's informed consent to evaluate the student, within a reasonable period of time of receiving parent's October 8, 2010 request for a meeting.

²⁰ Testimony of SEC.

²¹ Id.

²² Petitioner's Exhibit 6.

²³ Petitioner's Exhibit 5.

²⁴ Id.

²⁵ Id.

11. Failure to Provide Parent Access to Student's Educational Records

On October 5, 2010, the Petitioner, through her Attorney faxed to the Principal at the student's elementary school, a written request for the opportunity to inspect and review the student's educational records.²⁶

The Petitioner made no visits to the student's school to inspect or review the student's educational records prior to filing of the complaint, and the Respondent failed to respond to Petitioner's request to review and inspect the student's records.²⁷

On March 17, 2011, after filing of the complaint, the student's Education Advocate visited the student's school to inspect and review the student's educational records, however, the student's records were not available for inspection or review.²⁸

The Hearing Officer finds that the District of Columbia Public Schools failed to respond to Petitioner's request for access to the student's educational records; provide Petitioner copies of the student's educational records; or provide the student's representative the opportunity to inspect and review the student's records, within 45 days of parent's October 5, 2010 request; for access to the student's educational records.

VIII. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as the Hearing Officer's review of governing legal authority and case law, the Conclusions of Law of this Hearing Officer are as follows:

1. The burden of proof is properly placed on the Petitioner, the party seeking relief in this matter.²⁹ Under the IDEA, the Petitioner must prove the allegations in the due process complaint, by a preponderance of the evidence.³⁰
2. The Individuals with Disabilities Education Act ("IDEA")³¹ is the federal statute governing the education of students with disabilities.³² The IDEA ensures that all children with disabilities have available to them a free appropriate public education ("FAPE"), that emphasizes special education and related services specifically designed to meet their unique needs and prepare them for further education, employment, and independent living. See, 20 U.S.C. §1400(d)(1)(A).

²⁶ Petitioner's Exhibit 7.

²⁷ Testimony of Education Advocate and SEC.

²⁸ Testimony of Education Advocate.

²⁹ *Shaffer v. I Weast*, 546 U.S. 49, 56-057 (2005) and 5 D.C.M.R. §3030.3.

³⁰ 20 U.S.C. §14115(i)(2)(c). See also *Reid v. District of Columbia*, 401 F.3d 516, 521 (D.C. Cir.2005) (standard of review)

³¹ The IDEA is reauthorized as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA) Public Law 108-446 and 20 U.S.C. §1400 et seq..

³² The Federal regulations promulgated under the IDEA, are codified at 34 C.F.R. Part 300.

3. The IDEA defines a free appropriate public education (FAPE) as special education and related services provided at public expense, under public supervision and direction, and without charge; meet the school standards of the State educational agency; includes an appropriate preschool, elementary school, or secondary school education in the State involved; and the special education and related services must be provided in conformity with an Individualized Education Program (IEP) that meets the requirements of §§300.321 through 300.324.³³

In the District of Columbia, the local education agency (LEA) must ensure that all children with disabilities, between the ages of 3 and 21, have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. This student is a child with disabilities entitled to receive special education and related services, pursuant to the IDEA.

4. **Failure to Identify, Locate, Evaluate, and Determine the Student Eligible for Special Education Services**

“Child Find”.

The IDEA, at 34 C.F.R. Section 300.111, “Child Find”, requires that the LEA must have in effect policies and procedures to ensure that all children with disabilities residing in the State, and who are in need of special education and related services, are identified, located, and evaluated. In addition, subparagraph (c) of the “Child Find” provisions provide that “Child find” must also include children who are suspected of being a child with a disability under Section 300.8, and in need of special education, even though they are advancing from grade to grade.

It is the Hearing Officer’s decision that the Respondent has in effect policies and procedures to ensure that all children with disabilities residing in the state and who are in need of special education and related services, are identified, located, and evaluated, including children suspected of having a disability. However, the Petitioner failed to satisfy its burden by presenting evidence that the District of Columbia Public Schools failed to identify, locate, evaluate, and determine this student’s eligibility for special education services, in violation of the Child Find provisions of the IDEA, as set forth at the IDEA, at 34 C.F.R. §300.111.

Initial Evaluations.

The IDEA provides that consistent with the consent requirements in Section 300.300, either the parent of a child or the public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.³⁴ On October 8, 2010, the parent initiated a request for an initial evaluation of the student, to determine the student’s eligibility for special education services.

³³ IDEA, 34 C.F.R. §300.17(d).

³⁴ IDEA, at 34 C.F.R. §300.301(b).

An initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation; or if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.³⁵ The District of Columbia provides that initial evaluations must be completed within a reasonable period of time, however, no later than 120 days of receiving a written referral and parental consent to proceed.

The parent requested initial evaluation of the student on October 8, 2010, therefore, the DCPS was obligated to obtain parent's informed written consent and complete initial evaluation of this student within a reasonable period of time, and no later than February 8, 2011, within the 120 day timeframe.³⁶ However, as of February 28, 2011, the date of this complaint, the Respondent had not obtained the parent's informed written consent to evaluate, or completed an initial evaluation of the student.

It is the Hearing Officer's decision that the Petitioner satisfied its burden by presenting evidence that the District of Columbia Public Schools failed to obtain parent's informed consent to evaluate, and complete initial evaluations within 120 days of parent's October 8, 2010 referral of the student for evaluation, in violation of the IDEA at 34 C.F.R. §§300.301(a)(b)(c)(1)(i)(ii) and (2)(i)(ii), and 300.304 (c)(4) and (6) and DCMR, Title 5, Chapter 30, §3005.2 and D.C. Code, Chapter 25B, §38-2561.02(a).

4. Failure to Convene a Multidisciplinary Development Team/Student Evaluation Planning Team Meeting

It is the decision of the Hearing Officer that the Petitioner proved that the Respondent failed to comply with the procedural requirements of the IDEA, by convening a Multidisciplinary Development Team/SEP Team Meeting, within a reasonable period of time of receiving parent's request for a meeting, to discuss the educational needs of the student, parent's request for initial evaluations, and obtain parent's informed written consent to evaluate the student, in violation of the IDEA, at 34 C.F.R. Section 300.300(a)(1)(i)(ii) and (iii), 300.306(a)(1).

³⁵ IDEA, 34 C.F.R. § 300.301(b) and (c).

³⁶ The D.C. Municipal Regulation, Title 5, Chapter 30, §3005.2 provides that the IEP team shall conduct an initial evaluation of a child *within a reasonable period of time of receiving a written referral and parental consent* to proceed and within the timelines consistent with Federal law and D.C. Code §38-2501. (2006). The District of Columbia Code, Chapter 25, §38-2501 (a), entitled "Special Education and Assessment", established a 120 day timeframe within which initial evaluations and assessments must be completed for students who may have a disability and may require special education services; applicable to all students, without distinguishing between students in *public or non-public schools*. The District of Columbia repealed D.C. Code, §38-2501(a), and failed to replace the section with another section establishing a timeframe for completing initial evaluations/assessments for students in public schools. D.C. Code, Chapter 25B, which is entitled "Placement of Students with Disabilities in Nonpublic Schools" is ambiguous. The *title* of the Chapter 25B leaves readers unclear whether the Chapter and its underlying provisions, only apply to students in nonpublic schools; or whether Chapter 25B, §38-2561.02 (a) establishes the timeline for DCPS to complete initial evaluations for all students, regardless of whether a student attends a public or non-public school. However, a review of recent Federal District Court decisions provides this Hearing Officer the necessary clarification. It is clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a), as establishing the timeline for DCPS to complete initial evaluations for all students, regardless of whether the students attend public or non-public schools. It is equally clear that the Federal District Court interprets Chapter 25B, §38-2561.02 (a); as requiring DCPS to assess or evaluate a student who may have a disability, and who may require special education services, within *120 days* from the date that the student is referred for an evaluation or assessment. *See, Dorros v. District of Columbia, 510 F.Supp.2d 97 (2007); Integrated Design and Electronics Academy Public Charter School v. McKinley, 570 F.Supp.2d 28 (2008); Jones ex rel. A.J. v. District of Columbia, 109 LRP 52722 (2009).*

5. Failure to Provide Parent Access to the Student's Educational Records

The IDEA, 34 C.F.R. Section 300.501 provides:

"The parents of a child with a disability *must* be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to *inspect and review* all educational records with respect to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child."

Subparagraph (a) provides that each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part.³⁷

The agency must comply with a request for student records, without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Section 300.507 or Section 300.530 through 300.532, or resolution session pursuant to Section 300.510, and in no case more than 45 days after the request has been made.

According to the IDEA, 34 C.F.R. §300.613 (b) the right to inspect and review education records includes—

- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (3) The right to have a representative of the parent inspect and review the records.

It is the Hearing Officers' decision that Petitioner satisfied its burden by presenting evidence that the District of Columbia Public Schools failed to comply with the procedural requirements of the IDEA, by providing the parent access to the student's educational records within 45 days of parent's request for access to the student's records, in violation of IDEA, §§300.501 and 300.613.

IX. DECISION

It is the decision of the Hearing Officer that the Petitioner proved that the violations in this matter, impeded the student's right to a free and appropriate public education and significantly impeded the parent's opportunity to participate in the decision making process regarding the provisions of a FAPE to the student.

³⁷ IDEA, 34 C.F.R. § 300.613.

It is also the Hearing Officer's decision that the procedural violations, seriously infringed upon the parent's opportunity to provide "meaningful" input in all decisions regarding the student's education, and the provision of a FAPE to the student.³⁸ For these reasons, it is the decision of the Hearing Officer that the student was denied a FAPE; and is entitled to compensatory education services.

X. COMPENSATORY EDUCATION SERVICES

It is the Hearing Officer's decision that Petitioner satisfied its burden of proof by presenting evidence that the Respondent failed to comply with the procedural requirements of the IDEA, and that the procedural violations impacted the substantive rights of the parent and student, resulting in denial of a FAPE to the student, and an entitlement to compensatory education services.

According to Stanton v. District of Columbia, 680 F. Supp. 2d 201 (D.C. Cir. 2010), once a Hearing Officer finds that there was a denial of a FAPE, the Hearing Officer is obligated to craft an appropriate compensatory education award. However, the information necessary for this Hearing Officer to craft an appropriate award for this student is insufficient. The Petitioner withdrew its request for compensatory education services, thus, presented no compensatory education plan. Additionally, absent completion and review of initial evaluations by an MDT team, and a determination regarding the student's eligibility for special education services, any determination regarding compensatory education services, is premature.

The Hearing Officer is also precluded from referring the decision regarding compensatory education services, to an IEP team. For these reasons, the Hearing Officer must craft an appropriate compensatory education award for the student, and finds that the following remedy is appropriate:

Once independent evaluations ordered by this Hearing Officer are reviewed and a determination made regarding the student's eligibility for special education services, the Petitioner may request a due process hearing before this Hearing Officer, for the sole purpose of determining the nature and amount of compensatory education services the student is entitled to receive for the violations occurring herein.

The Petitioner must file an administrative due process complaint notice, within sixty (60) calendar days of the eligibility determination. Petitioner's failure to file a timely request for a hearing, will result in this decision serving as the final agency decision in this matter. Should the Petitioner request a due process hearing for this purpose, both parties shall attend the hearing prepared to present evidence of the nature and amount of compensatory education services to student is entitled to receive, consistent with the standard established in Reid v. District of Columbia, 401 F.3d 516 (D.C. Cir. 2005).

³⁸ See, Babb v. Knox County Sch. Sys., 965 F.2d 104, 109 (6th Cir. 1992); W.G., 960 F.2d at 1484.

XI. ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby:

1. **ORDERED**, that within ten (10) school days of the date of this decision, the Respondent shall convene an Student Support Team (SST) meeting with the parent and parent's representative, to discuss and address the student's problematic behavior at school, including incorporating behavioral interventions, supports, and modifications into the student's educational program; and it is further
2. **ORDERED**, that within ten (10) school days of the date of this decision, the Respondent shall issue to the parent an Independent Educational Evaluation (IEE) letter authorizing the parent to obtain independent comprehensive evaluations of the student, to assess the student's academic, developmental, and functional needs and assist in determining the student's eligibility for special education services; and a Functional Behavioral Assessment to assess the student's social/emotional needs, and it is further
3. **ORDERED**, that within ten (10) school days of receipt of the final independent evaluation, the Respondent shall convene a Multidisciplinary Development Team (MDT) eligibility meeting to review the student's evaluations, determine the students' eligibility for special education services, and if appropriate develop an IEP for the student consistent with the findings and recommendations in the evaluations; and develop a Behavioral Intervention Plan (BIP) for the student.

XII. NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: April 24, 2011

Ramona M. Justice

Attorney Ramona M. Justice, Hearing Officer